



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HILLSBORO-DEERING FEDERATION OF :
TEACHERS/AFT :

Complainant :

v. :

HILLSBORO-DEERING COOPERATIVE :
SCHOOL DISTRICT :

Respondent :

CASE NO. T-0233:9

DECISION NO. 93-55

APPEARANCES

Representing Hillsboro-Deering Federation of Teachers/AFT:

Emmanuel Krasner, Esq., Counsel

Representing Hillsboro-Deering Cooperative School District:

Douglas S. Hatfield, Jr., Esq., Counsel

Also appearing:

Wayne Emerson, School Board
John J. Thyng, School Board
Prescott N. Lane, School Board
Edward Phaneuf, A.F.T.
Ralph Minichiello, Superintendent
Kathryn J. Ford, H.D. Federation of Teachers
Maureen Bass, H.D. Federation of Teachers

BACKGROUND

The Hillsboro-Deering Federation of Teachers/AFT/AFL-CIO (Union) filed unfair labor practice (ULP) charges against the Hillsboro-Deering Cooperative School District (District) on December 24, 1992, alleging a unilateral change in health insurance benefits planned for January 1, 1993 in violation of RSA 273-A:5 I (h) and (i) along with a request for a cease and desist order of

the same date. The parties thereafter appeared before the undersigned hearing officer on December 29, 1992 and agreed to a Consent Decree, the contents of which are incorporated herein by reference and may be found in Decision No. 92-200 (January 18, 1993). The District filed its answer to the ULP on January 5, 1993. This matter was then heard on the merits of the ULP by the undersigned hearing officer on March 18, 1993.

FINDINGS OF FACT

1. The Hillsboro-Deering Cooperative School District is a "public employer" of teachers and other personnel, as defined in RSA 273-A:1 X.
2. The Hillsboro-Deering Federation of Teachers/AFT/AFL-CIO is the duly certified bargaining agent for teachers and other personnel employed by the District.
3. The Union and the District are parties to a collective bargaining agreement (CBA) for the period July 1, 1992 through June 30, 1993. Article VII of that document provides that "the School Board will provide 100 percent of the cost of a medical insurance plan with provisions equal to those in place during 1986-87."
4. The Union and the District are parties to a "side bar" letter dated February 5, 1992. That document reflected "separate agreements that have been made but shall not be considered part of the collective bargaining agreement" and are set to expire by their own terms on June 30, 1993. One of the provisions thereof and the focus of this litigation provided for the establishment of a joint labor management committee to (1) study the health care benefits currently provided and (2) "make recommendations for implementation in the 1993 and 1994 school year no later than October 1, 1992...."
5. On or about December 21, 1992, the District caused a notice to be placed in the pay envelope of each teacher stating that it (the District) believed the side bar letter gave it authority to change the teachers' health insurance benefits on January 1, 1993 without further discussion or negotiation.
6. The District has announced its interpretation of the "in the 1993 and 1994 school year" language of the side bar letter to mean as of January 1, 1993. Likewise, the Association has announced its interpretation that the "1993 school year" means the period July 1, 1993 through June 30, 1994. (District Ex. No. 1)
7. Earlier and unsigned version(s) of the side bar letter

did not contain the phrase "for implementation in the 1993 and 1994 school year." Notes taken by Ed Phaneuf relative to a conversation with Douglas Hatfield on February 18, 1992 spoke of modifying the side bar letter by adding "for recommendations to be implemented in the 1993-94 school year," slightly different than what was ultimately incorporated. A letter from Douglas Hatfield to then Superintendent Minichiello dated February 18, 1993, transmitted a copy of the side bar letter adopted and cited in Finding No. 4, above.

8. The report the joint labor-management committee to study the health insurance issue was dated July 23, 1992. It said that its recommendations "cover[ed] the 1993 and 1994 school years as stipulated in the February 5, 1992 side-bar letter." (Emphasis added). The 1994 school year recommendation contained the words, "this second year recommendation..."
9. A letter from Phaneuf to Hatfield on January 22, 1992 spoke to two one year agreements. They were reflected as 1991-'92 and 1992-'93, respectively. Item 7 thereof spoke to the formation of a committee to study and make recommendations on health insurance issues "for the next contract negotiations." (Union Ex. D) (Emphasis added)
10. The practice of the parties, as reflected by collective bargaining agreements, has been to refer to school years by reciting two years separated by a hyphen or dash: 1992-1993 (Salary Schedule, Union Ex. K), 1979-1990 (Salary Schedule, Union Ex. L), 1980-1981 (Salary schedules A, B and C, Union Ex. M), and 1983-1984 and 1984-1985 (Salary Schedules A and B, Union Exhibit N).
11. Phaneuf and Maureen Bass both testified that the reason the October 1, 1992 date was used in the side bar letter (Finding No. 4) was because that was the date to start negotiations for the 1993-94 school year contract. Phaneuf's policy is to talk about contracts by referencing their starting year, i.e., "If I talk about a 1992 contract, it runs from September 1992 through June, 1993."
12. The side bar letter (Finding No. 4) is internally inconsistent because, where it speaks to the length of the contract year, it references "for the 1991-92 and 1992-93 school years..." consistent with the parties' practice as noted in Finding No. 10. Likewise, it sets forth a specific date for the

implementation of the sick leave bank, i.e., September 1, 1992.

13. Bass testified that modifications taken to and approved by the membership were for changes to become effective July 1, 1993, the same date used by the Blue Cross representative who explained changes in the plan. No reference to a co-pay plan was made to or considered by the union membership when they approved modifications in health care benefits for what they believed to be the period beginning July 1, 1993. Bass did not believe any proposed changes would be implemented before July 1, 1993 "because we already had a contract for that [1992-1993 school] year."
14. No witnesses testifying on behalf of the Union attached any difference to the use of the word "and" between 1993 and 1994 than the use of a hyphen for the same purpose. Federation President Kathryn Ford testified she "thought it was something lawyers do." Ford also testified that the issue of copayments was not taken to the membership because that was to be part of negotiations for 1994, i.e., in her mind outside of the scope of the side bar letter.
15. Board member John Thyng represented to District voters that the health insurance modifications, as perceived by the employer and supposedly effective January 1, 1993, would produce savings in the 1992-93 school year. Thyng had also expressed his concerns to the joint labor-management committee that there was a need to find savings for the 1992-93 school year, thus contributing to his belief that there was authority to make changes effective January 1, 1993.
16. Thyng believed the joint committee report of July 23, 1992 modified the CBA. (Union Ex. I). Internal union procedures provide for mid-term modifications to a CBA if the membership ratifies the change and the president thereafter signs the document representing the changes. (Phaneuf testimony). Neither the ratification nor the signing occurred.

DECISION AND ORDER

Despite testimony which was long and tortuous, one theme is clear in this case. The parties never came to a meeting of the minds either about the technical aspects of the side bar letter or the impact of the July 23, 1993 committee report. There is nothing to indicate that the parties even reached agreement on formalizing a modification to the July 1, 1992 through June 30, 1993 contract. This alone is sufficient for the hearing officer to conclude that

there was neither cause nor authority for the district to implement mid-term changes on January 1, 1993. This conclusion is reaffirmed by a long standing practice of the parties to use numbers referring to school years in which first numerals refer to the school year starting in September (or the contract year, starting in July, as the case may be) and the last numerals refer to the closure of the school year in June of the following calendar year. This case has been an exception to that practice which has been described in the findings above.

Under these circumstances, unilateral changes to the health plan on January 1, 1993 constituted a ULP in violation of RSA 273-A:5 I (h), a breach of contract since no formal modification to the CBA was ever effectuated. For the remainder of the 1992-93 school/contract year ending June 30, 1993, the District shall compensate bargaining unit members for any actual (out-of-pocket) losses sustained as the result of the change to the Comp 100 plan on January 1, 1993 from what is otherwise provided in Article VII of the parties' CBA. On and after July 1, 1993, the status quo, as provided in Article VII of the CBA, shall be reinstated until the parties shall have agreed to modifications therein through the negotiations process.

So ordered.

Signed this 30th day of April, 1993.



PARKER DENACO
Hearing Officer